



June 29, 2007

VIA HAND DELIVERY

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Room 1A-East, First Floor
888 First Street, N.E.
Washington, D.C. 20426

Re: ISO New England Inc., Docket No. ER07-____-000, Limited Revision to FCM Rules to Extend Date for Filing Regarding Treatment of De-List Bids Rejected for Reliability Reasons

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ ISO New England Inc. (the “ISO”) and the New England Power Pool (“NEPOOL”) Participants Committee, on behalf of NEPOOL² (“Filing Parties”), hereby submit a limited revision to the Forward Capacity Market (“FCM”) Market Rules (the “FCM Rules”) conditionally accepted by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on April 16, 2007³ to extend the stakeholder process for considering whether to change the treatment of de-list bids rejected for reliability reasons, and if so, in what manner.

As discussed in more detail below, the FCM Rules⁴ require the ISO, NEPOOL stakeholders and state utility regulatory agencies to determine, by June 30, 2007, whether to change the treatment of de-list bids rejected for reliability reasons, and if so, in what manner. After careful consideration and with the input of state utility regulatory agencies, ISO and NEPOOL stakeholders unanimously agreed to defer the June 30, 2007 filing date to May 15, 2008 in order to provide additional time for all parties to understand and properly address this complex issue, and to allow discussions on the topic

¹ 16 U.S.C. § 824d (2000).

² Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the “Tariff”), the Second Restated New England Power Pool Agreement, and the Participants Agreement.

³ *ISO New England Inc.*, 119 FERC ¶ 61,045 (2007) (“April 16 Order”).

⁴ The FCM Rules are contained in Section III.13 of the Tariff.

to be informed by the experience gained in conducting the first Forward Capacity Auction. The ISO and NEPOOL request an effective date of August 30, 2007 for this change.

I. Communications

All correspondence and communications in this proceeding should be addressed to:

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II. Standard of Review

The ISO submits this revision pursuant to Section 205 of the FPA, which “gives a utility the right to file rates and terms for services rendered with its assets.”⁶ Under

⁵ Due to the joint nature of this filing, the Filing Parties respectfully request a waiver of Section 385.203 of the Commission’s regulations to allow the inclusion of more than two persons on the service list in this proceeding.

Section 205, the Commission “plays ‘an essentially passive and reactive’ role”⁷ whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”⁸ The Commission limits this inquiry “into whether the rates proposed by a utility are reasonable – and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”⁹ The change proposed herein “need not be the only reasonable methodology, or even the most accurate.”¹⁰ As a result, even if an intervenor or the Commission develops an alternate proposal, the Commission must accept this Section 205 filing if it is just and reasonable.¹¹

III. Discussion of Proposed Change

Section III.13.2.5.2.5 explains how bids that are rejected for reliability reasons will be treated in the FCM. Subsection (f) of that section directs the ISO, NEPOOL stakeholders and state utility regulatory agencies to review the treatment of bids rejected for reliability reasons, and to consider whether bids rejected for reliability reasons should be included in the calculation of out-of-market capacity that is used to determine the applicability of the Alternative Capacity Price Rule.¹² Section III.13.2.5.2.5(f) of the FCM Market Rules states in its entirety:

Beginning in April 2007, the ISO will evaluate, in consultation with NEPOOL stakeholders and state utility regulatory agencies, whether to modify the treatment of de-list bids rejected for reliability reasons pursuant to this section, including but not limited to an evaluation of the application of the Alternative Capacity Price Rule, or similar mechanism, to FCAs affected by de-list bids rejected for reliability reasons. Pursuant to Section 205 of the Federal Power Act, the ISO will file with FERC on or

⁶ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002). While there are provisions in Section 4.A. of the FCM Settlement Agreement regarding the standard of review that is applicable to substantive modifications to the FCM Market Rules that address the terms of the FCM Settlement Agreement, the change included herein is non-substantive and simply delays the date by which the ISO, NEPOOL stakeholders and state utility regulatory agencies must consider a possible substantive change to the FCM Market Rules.

⁷ *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

⁸ *Id.*

⁹ See *ISO New England Inc.*, 114 FERC ¶ 61,315 at P 33 and n.35 (2005), citing *Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1211 (10th Cir. 1987) and *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (“*City of Bethany*”), cert. denied, 469 U.S. 917 (1984).

¹⁰ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

¹¹ Cf. *Southern California Edison Co., et al.*, 73 FERC ¶ 61,219 at 61,608 n.73 (1995) (“Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.” (citing *City of Bethany*, 727 F.2d at 1136)).

¹² Generally, the Alternative Capacity Price Rule provides that the Forward Capacity Auction clearing price will be modified when certain conditions are met. One of these conditions is that the amount of out-of-market capacity exceeds the amount of new capacity required. The amount of out-of-market capacity is calculated by adding together various capacity amounts specified in Section III.13.2.7.8 of the FCM Rules.

before June 30, 2007 either: (i) any potential rule changes relating to the treatment of de-list bids rejected for reliability reasons or (ii) its recommendation not to institute any rule changes and to delete this subsection (f).

As required by Section III.13.2.5.2.5(f), starting in April 2007, the ISO, state utility regulatory agencies, and NEPOOL stakeholders spent considerable time discussing the treatment of de-list bids rejected for reliability reasons, and specifically whether those bids should be subject to the Alternative Capacity Price Rule. Numerous arguments for and against changing the treatment of de-list bids rejected for reliability reasons were raised, as well as various related implementation issues. Despite substantial discussion at four meetings of the NEPOOL Markets Committee,¹³ that committee was unable to reach consensus on this issue. With the understanding that more time may help to inform and enlighten the debate, a proposal to defer resolution of the issue was proposed and unanimously approved by the NEPOOL Participants Committee at its June 8, 2007 meeting, with support from the state utility regulatory agencies. To effectuate this deferral, the NEPOOL Participants Committee voted to change – from June 30, 2007 to May 15, 2008 – the date by which the ISO must file with the Commission either: (i) rule changes relating to the treatment of de-list bids rejected for reliability reasons; or (ii) a recommendation not to institute any rule changes and to delete Section III.13.2.5.2.5(f). This extension will provide the ISO, NEPOOL stakeholders and state utility regulatory agencies with the additional time needed to fully understand and properly address this issue, and will allow discussions on the topic to be informed by the experience gained in conducting the first Forward Capacity Auction.

IV. Additional Supporting Information

Section 35.13 of the Commission’s regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates.¹⁴ However, the proposed Tariff provisions associated with the implementation of the FCM are not traditional “rates” and the ISO is not a traditional investor-owned utility. Therefore, to the extent necessary, the ISO requests waiver of Section 35.13 of the Commission’s regulations. Notwithstanding its request for waiver, the ISO submits the additional information enumerated below in substantial compliance with relevant provisions of Section 35.13.

35.13(b)(1) - Materials included herewith are as follows:

- ◆ This transmittal letter;
- ◆ Attachment 1: A blacklined Tariff sheet reflecting the change proposed in this filing;

¹³ This issue was discussed at meetings of the Markets Committee on April 24, 2007, May 8, 2007, May 31, 2007, and June 6, 2007.

¹⁴ 18 C.F.R. § 35.13 (2006).

- ◆ Attachment 2: A revised Tariff Sheet reflecting the change proposed in this filing; and
- ◆ Attachment 3: List of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent.

35.13(b)(2) – The ISO and NEPOOL request that the modification of the Tariff become effective on August 30, 2007.

35.13(b)(3) - Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at http://www.iso-ne.com/regulatory/ferc/nepool/gov_prtcpts_eserved.pdf. A paper copy of this transmittal letter and the accompanying materials have also been sent to the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, and to the New England Conference of Public Utility Commissioners ("NECPUC"). The names and addresses of these governors and regulatory agencies are shown in Attachment 3. In accordance with Commission rules and practice, there is no need for the Governance Participants or the entities identified on Attachment 3 to be included on the Commission's official service list in the captioned proceeding unless such entities become intervenors in this proceeding.

35.13(b)(4) - A description of the materials submitted pursuant to this filing is contained in this transmittal letter.

35.13(b)(5) - The reasons for this filing are discussed, *inter alia*, in Section III of this transmittal letter.

35.13(b)(6) - The Filing Parties' approval of these changes is evidenced by this filing. These changes reflect the results of the Participant Processes required by the Participants Agreement and reflect the support of the Participants Committee.

35.13(b)(7) - The ISO has no knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

V. Conclusion

For the foregoing reasons, the ISO and the NEPOOL Participants Committee, on behalf of NEPOOL, respectfully request that the Commission approve the change to the FCM Rules described herein.

Respectfully submitted,

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Dated: June 29, 2007

ATTACHMENT 1

Blacklined Tariff Sheet

Auction or Capacity Supply Obligation
Bilateral for that and subsequent Capacity
Commitment Periods. If the resource
continues to be needed for reliability
reasons, it shall be counted as capacity in the
Forward Capacity Auction and shall be
compensated at a just and reasonable rate
until such time as it is no longer needed for
reliability reasons.

- (f) Beginning in April 2007, the ISO will
evaluate, in consultation with NEPOOL
stakeholders and state utility regulatory
agencies, whether to modify the treatment of
de-list bids rejected for reliability reasons
pursuant to this section, including but not
limited to an evaluation of the application of
the Alternative Capacity Price Rule, or
similar mechanism, to FCAs affected by de-
list bids rejected for reliability reasons.
Pursuant to Section 205 of the Federal
Power Act, the ISO will file with FERC on
or before ~~May 15, 2008~~ June 30, 2007 either:
(i) any potential rule changes relating to the
treatment of de-list bids rejected for
reliability reasons or (ii) its recommendation
not to institute any rule changes and to
delete this subsection (f).

ATTACHMENT 2

Clean Tariff Sheet

Auction or Capacity Supply Obligation Bilateral for that and subsequent Capacity Commitment Periods. If the resource continues to be needed for reliability reasons, it shall be counted as capacity in the Forward Capacity Auction and shall be compensated at a just and reasonable rate until such time as it is no longer needed for reliability reasons.

- (f) Beginning in April 2007, the ISO will evaluate, in consultation with NEPOOL stakeholders and state utility regulatory agencies, whether to modify the treatment of de-list bids rejected for reliability reasons pursuant to this section, including but not limited to an evaluation of the application of the Alternative Capacity Price Rule, or similar mechanism, to FCAs affected by de-list bids rejected for reliability reasons. Pursuant to Section 205 of the Federal Power Act, the ISO will file with FERC on or before May 15, 2008 either: (i) any potential rule changes relating to the treatment of de-list bids rejected for reliability reasons or (ii) its recommendation not to institute any rule changes and to delete this subsection (f).

ATTACHMENT 3

Governors and Utility Regulatory Agencies

The Honorable M. Jodi Rell
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The Honorable John E. Baldacci
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The Honorable Deval Patrick
Office of the Governor
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Massachusetts Dept. of Public Utilities
And Energy
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The Honorable John H. Lynch
State House
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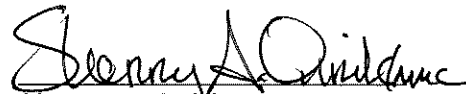
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document and attachments upon the Governance Participants and each person identified in Attachment 3 of the attached transmittal letter, in the manner specified in the transmittal letter.

Dated at Washington, D.C., this 29th day of June, 2007.


Sherry A. Quirk, Esq.